

**BEFORE THE SUPREME COURT COMMITTEE ON PROFESSIONAL CONDUCT  
PANEL A**

**FILED**

IN RE: **MAX M. HORNER, JR.**  
Arkansas Bar ID # 2001067  
CPC Docket No. 2007-110

APR 01 2008

**LESLIE W. STEEN  
CLERK**

**FINDINGS AND ORDER**

The formal charges of misconduct upon which this Findings and Order is based were developed from information provided to the Committee by Rosemarie Torres-Childers. On May 8, 2007, Rosemarie Torres-Childers and Benjamin T. Childers paid Horner & Marshall, PLLC a \$2500 retainer to assist their son, Ernesto Vasques Macias, in filing a petition for the establishment of paternity, visitation, and child support. According to Respondent's now-former law partner, Pat Marshall, Ernesto had been Max Horner's client since October 2004. When Ernesto decided not to pursue the matter, Mrs. Childers requested a refund on the unused portion of the retainer. As of July 2007, Horner & Marshall had only earned \$93.58 of the \$2500 retainer, leaving a \$2406.42 unearned balance on the retainer.

On July 27, 2007, in an email from Pat Marshall to Respondent, Marshall inquired of Mr. Horner whether he had one-half of the unearned retainer. Mr. Horner responded that he did not have one-half of the retainer, that it should have been put into the trust account, and that it was his understanding that this fee was still in the firm trust account. On August 1, 2007, Pat Marshall sent a \$1,203.31 check to Rosemarie Childers. This amount represented ½ of the unearned retainer that was due back to her. Pat Marshall paid the other portion of the unearned retainer fee on September 6, 2007, and has acknowledged that the retainer should have been placed in the firm trust account.

Upon consideration of the formal complaint, the response thereto, and the Arkansas Rules of Professional Conduct, the Committee on Professional Conduct finds:

A. Mr. Horner's conduct violated Rule 1.15(a) when he failed to maintain the \$2500 retainer separate from funds of Horner & Marshall. Rule 1.15(a)(1) requires that a lawyer shall hold property of clients or third persons, including prospective clients, that is in a lawyer's possession in connection with a representation separate from the lawyer's own property.

B. Mr. Horner's conduct violated Rule 1.15(b)(1) in that he failed to deposit and maintain the \$2500 retainer in a separate, clearly identifiable trust account of Horner & Marshall. Rule 1.15(b)(1) requires that funds of a client shall be deposited and maintained in one or more separate, clearly identifiable trust accounts in the state where the lawyer's office is situated, or elsewhere with the consent of the client or third person.

C. Mr. Horner's conduct violated Rule 1.15(b)(2) in that he failed to deposit into a client trust account the legal fees and expenses that had been paid in advance by the Childerses to be withdrawn only as fees were earned or expenses incurred. Rule 1.15(b)(2) requires that a lawyer shall deposit into a client trust account legal fees and expenses that have been paid in advance, to be withdrawn by the lawyer only as fees are earned or expenses incurred.

WHEREFORE, it is the decision and order of the Arkansas Supreme Court Committee on Professional Conduct, acting through its authorized Panel A, that **MAX HORNER**, Arkansas Bar ID# 2001067, be, and hereby is, **REPRIMANDED** for his conduct in this matter, and he is ordered to pay \$50.00 Committee case costs, payable by cashier's check or money order to the "Clerk, Arkansas Supreme Court" and delivered to the Office of Professional Conduct within thirty (30) days of the date this Findings and Order is filed of record with the Clerk of the Arkansas Supreme Court.

ARKANSAS SUPREME COURT COMMITTEE ON  
PROFESSIONAL CONDUCT - PANEL A

By: Steven Shults  
Steven Shults, Chairperson

Date: January 28, 2008